



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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APR 10 2003

Paper No. 16

In re Application of
Sami Uskela *et al*
Application No. 09/405,088
Filed: September 27, 1999
Attorney Docket No. 017.37498X00

: DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on January 30, 2003 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated July 6, 2001. This decision follows the Decision on Petition dated March 19, 2003, paper No. 15, which addressed so much of the January 30, 2003 petition in which petitioners requested certain relief falling under the jurisdiction of the Office of Petitions. In accordance with paper No. 15, this decision addresses that portion of the January 30, 2003 petition requesting relief under 37 CFR 1.181.

The petition is denied.

A review of the petition, and of paper No. 15, shows that subsequent to the mailing of the Office letter dated July 6, 2001, a final rejection, petitioners filed an amendment after final action which was refused entry. An interview was conducted with the examiner. The examiner stated during the interview that the final rejection would be withdrawn, but did not in fact withdraw the rejection. Petitioners took no further action in the application, which now stands technically abandoned under 35 USC § 133 due to the failure to file a proper reply to the outstanding final rejection.

As set forth in paper No. 15, there is simply no basis upon which petitioners could be relieved of the necessity of complying with the requirements of the 37 CFR 1.133 and the resulting operation of 35 USC § 133. The examiner could not waive the requirements of any regulation, and the Office cannot avoid or overcome the operation of 35 USC § 133 as a result of a failure by petitioners to take action required pursuant to 37 CFR 1.113 and 1.116. While it is regrettable that the examiner did not take the action indicated in the interview, petitioners nevertheless remained under a duty imposed by the last mentioned regulations, which the examiner (and the undersigned) lack authority to waive. Failure to take the required action pursuant to 37 CFR 1.113 and 1.116 triggered the operation of 35 USC § 133, and there is simply no basis upon which to hold that the abandonment was a result of error by the Office so as to warrant withdrawal of the abandonment pursuant to 37 CFR 1.181. It would appear that petitioners must proceed under 37 CFR 1.137 to revive this application.

This application is being forwarded to the Supervisory Patent Examiner in Art Unit 3714 for preparation and mailing of a Notice of Abandonment. Thereafter, the application will be forwarded to storage as an abandoned file. Petitioners may file a request for reconsideration of this decision, without fee, provided that the request for reconsideration is filed within two months from the date of this decision. See 37 CFR 1.181(f).

PETITION DENIED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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